

section "contracts for the sale of goods," &c., applied to all agreements for future delivery, even where something remained to be done to the goods to put them in a state for delivery, or to such only where the general property of the goods was transferred to the purchaser. A mere executory contract, as in *Newman v. Morris*, 4 H. & McH. 421, is within the Statute; see also *Franklin v. Long*, 7 G. & J. 407. But in *Eichelberger v. McCauley*, 5 H. & J. 213, a contract for the delivery of wheat at a future period, which wheat was at the time of the contract in the stack unthreshed, was held not to be within the Statute, on the ground that work and labour being necessary to prepare the wheat for delivery, it was not a sale of goods within this section. In *Rentch v. Long*, 27 Md. 188, the contract was to deliver corn at a future period, which corn was then in the field ungathered and unshucked, and the Court said that, whatever opinion they might entertain on the question, if presented to their consideration for the first time, they were not willing to disturb the rule established in *Eichelberger v. McCauley*, which had so long remained unquestioned in Maryland.<sup>126</sup>

It is sometimes a question whether the cause of action which a plaintiff may have is for a sale of goods, or whether it is for work and labour and materials.<sup>127</sup> In *Lee v. Griffin*, 1 Best & S. 272, a contract to make a set of artificial teeth was held within the Statute, the rule being stated to be, that where the subject matter of the contract is a chattel to be afterwards delivered, the cause of action is goods sold and delivered, and the seller cannot sue for work and labour, and it was denied that the value of the skill and labour furnished, in comparison with that of the materials on which they were bestowed, furnished any test in such cases. But where the materials supplied are merely auxilliary,

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<sup>126</sup> These cases were affirmed in *Bagby v. Walker*, 78 Md. 246, which involved a verbal contract for the sale of lumber which the vendor had to cut and prepare for delivery. But a sale of growing crops, or timber, to be cut and removed by the vendee seems to be within the 17th section, though not the 4th. *Purner v. Piercy*, 40 Md. 222; *Sentman v. Gamble*, 69 Md. 310; *Leonard v. Medford*, 85 Md. 666; *Wilson v. Fowler*, 88 Md. 601.

But the Sales Act of 1910 provides as follows: "The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract or sale be actually made, procured or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply." Code 1911, Art. 83, sec. 25 (2). See also notes 65 and 66 *supra*.

<sup>127</sup> In an action to recover the price of goods bargained and sold no recovery can be had for work and labor done to such goods, where the declaration does not contain a count for work and labor. *Armstrong v. Turner*, 49 Md. 589.